IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24080 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AJITBHAI NARSINHBHAI PATEL - Petitioner(s)

Versus

PRINCIPAL SECRETARY (APPEALS) REVENUE DEPARTMENT & 6 - Respondent(s)

==========

Appearance :

MR KK TRIVEDI for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,2,3.
MR AJ PATEL for MR KM PARIKH for Respondent(s) : 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, 4.2.7, 4.2.8, 4.2.9, 4.2.10, 4.2.11,4.2.12,5,6,7.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 31/01/2006

ORAL JUDGMENT

1.Rule. Learned AGP Shri Siraj Gori waives service of notice of rule on behalf of respondents no. 1 to 3. The learned advocate Shri A.J.Patel appearing for Shri

K.M.Parikh waives service of notice of rule on behalf of the rest of the respondents. At the joint request of learned advocates appearing for the parties, the petition is taken up for final disposal today.

2.In the present petition, the petitioner has challenged an order dated 04-06-2005 passed by the Principal Secretary(Appeals), Revenue Department, Government of Gujarat. By the said order, the Principal Secretary was pleased to allow the revision application filed by the private respondents herein and set aside an order dated 1/4-06-1996 passed by the Deputy Collector, Choryasi Prant, Surat.

2.1 By the order dated 1/4-6-1996, the Deputy Collector was pleased to allow the application of the petitioner herein for preparation of fresh maps for certain lands of block no. 624 of village Bhattha Taluka Choryasi. The Deputy Collector had come to the conclusion that after consolidation schemes of 1945 and 1979, there has been interchanging of possession between the land owners. The existing maps do not reflect the correct position. He therefore, directed that fresh maps be prepared by DILR.

2.2 The revision application was filed by the private respondents before the State Government. This revision application came to be allowed by impugned order dated 07-06-2005. The order passed by the Deputy Collector was set aside. One of the main grounds on which the Principal Secretary was inclined to interfere with the order passed by the Deputy Collector was that one of the owners of land, Ramiben widow of Dahyabhai Premabhai had expired in the year 1993. Her heirs were brought on record in the village forms. However, without issuing notice to them, order was passed by the Deputy Collector. It was also observed that direction was given to prepare fresh maps not on the basis of distribution of blocks but on the basis of changes made in the blocks. It was observed that without ascertaining the total area of the blocks, order was passed by the Deputy Collector. On these grounds the Principal Secretary decided to interfere with the order passed by the Deputy Collector.

3. From the above recording of the events, it would appear that one of the main grounds on which the Principal Secretary decided to interfere with the order passed by the Deputy Collector was that some of the interested

persons were not heard before passing of the final order which was opposed to the principles of natural justice. If that be so, it could have been provided that the Deputy Collector should pass fresh order in accordance with law after hearing all the concerned parties. Therefore, in so far as order passed by the Principal Secretary to interfere with the order passed by the Deputy Collector and set aside the same is concerned, the same calls for no interference. However, it should have been provided that the Deputy Collector should pass fresh orders in accordance with law after hearing all the interested persons. To that extent order passed by the Principal Secretary needs modification.

4. The learned advocate Shri A.J.Patel submitted that under the order of remand, the petitioner cannot seek to reopen the concluded schemes and order of this Court should not be permitted to be utilised to urge before Deputy Collector to reopen the scheme under the guise of preparation of fresh maps. The learned advocate Shri Trivedi for the petitioner submitted that the intention of the petitioner is to ensure preparation of correct maps and he states that there is no intention on the

part of the petitioner to reopen the concluded scheme under the provisions of Bombay Prevention of the Fragmentation and Consolidation of Holdings Act,1948.

5. In the result by disposing of this petition, it is directed that the Deputy Collector shall take a fresh decision on the application of the petitioner after giving an opportunity of being heard to all the interested persons and after considering the contentions that will be raised by the appearing parties, bearing in mind the observations made by this Court here-in-above. The petition is disposed of accordingly. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)